UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: March 11, 2005

Opposition Nos. 91157206
91159578

Toyota Jidosha Kabushiki Kaisha, t/a Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc.

v.

Syngenta Participations AG[1]

Linda Skoro, Interlocutory Attorney

This case now comes up on the parties' motion for entry of a protective order, filed October 1, 2004, by opposer and filed November 19, 2004, by applicant[2]. As the dispute continues, opposer filed another motion on March 1, 2005.

The parties are unable to agree to one specific provision in an otherwise complete protective agreement. The controversial sentence appears to be: "Material in evidence in this proceeding only upon consent of the other party or party not creating said deletions." Applicant

[1] Applicant is advised that it needs to include the opposition proceeding numbers in its caption to avoid delay in having its papers associated with the file.

[2] Opposers' motion to strike applicant's surreply, filed December 17, 2004, is hereby granted and applicant's motion to add exhibits to its surreply, filed December 17, 2004, is hereby denied as moot.

wants this language added to the sentence that reads: "Deletions made from any material in accordance with the terms of this protective order shall not affect the admissibility of any such material in evidence in this proceeding." Applicant is concerned that without this controversial sentence, admissibility of confidential material will be affected, in that applicant may be forced to waive its rights to object to the admissibility of materials produced by opposers. Applicant requests either complete deletion of the entire paragraph or inclusion of its controversial sentence.

Opposers' position is that "if a party offers in evidence only part of a confidential document produced by an adverse party, the remedy is not to object to admissibility, but to offer the entire document." The Board agrees.

The Federal Rules of Civil Procedure and Trademark Rule 2.122 govern admissibility of evidence. In similar matters, namely non-confidential evidence, the rules allow a party to enter any other portion of an admitted document if it believes that the partial admission, by its opponent, has been unfairly redacted. *See* 37 CFR § 2.120(j)(4)& (5). In such a circumstance, the appropriate response is submission of additional material, in this case as confidential, and not an objection to its admissibility, or its designation as

confidential. Any objection to admissibility is decided at final hearing. *See* TBMP § 702.02(c) (2d ed. rev. 2004).

Accordingly, applicant's controversial sentence is unnecessary. The parties have TWENTY days to put in place a protective agreement, or the Board will impose its own protective agreement that is set out in the appendix to the Board's manual of procedure and on the Board's website.

The Board now turns to opposers' most recent filing involving the continued request by applicant for opposers to produce copies of third-party litigation documents. Such information is discoverable. However, the only information which must be provided with respect to a legal proceeding is the names of the parties thereto, the jurisdiction, the proceeding number, the outcome of the proceeding, and the citation of the decision (if published). *See Interbank Card Ass'n v. United States National Bank of Oregon,* 197 USPQ 127, 128 (TTAB 1975) and *Johnson & Johnson v. Rexall Dug Co.,* 186 USPQ 167, 172 (TTAB 1975). Accordingly, opposers' motion is granted to the extent it does not have to produce copies of documents, but need only identify relevant litigation.

The trial dates are reset, including discovery, to accommodate the parties' supplementing of their responses

after the protective agreement is in place[3]. The trial dates are reset as follows:

Discovery period to close:	**5/15/2005**
30-day testimony period for party in position of plaintiff to close:	**8/13/2005**
30-day testimony period for party in position of defendant to close:	**10/12/2005**
15-day rebuttal testimony period to close:	**11/26/2005**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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[3] While applicant objected to the extension of the discovery period, claiming it was a dilatory tactic on the part of opposer, it states that there are still many outstanding discovery responses.